

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**11**

**Decision**

**TOPIC**

**Amended Notice of Intended Action – Water Use & Allocation Permit Fees,  
Chapter 50: Scope of Division—Definitions—  
Forms—Rules of Practice; and Chapter 55:  
Aquifer Storage and Recovery: Criteria and  
Conditions for Authorizing Storage, Recovery,  
and Use of Water**

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The Commission is asked to approve this amended Notice of Intended Action to initiate rulemaking to amend the Iowa Administrative Code: Chapter 50: Scope of Division – Definitions – Forms – Rules of Practice and Chapter 55: Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water. The changes being proposed would revise the fee schedule for water use permits and aquifer storage and recovery well permits, as directed by the Commission at its February meeting.

Water use permits are required of any person or entity using 25,000 gallons of water in a single day during the year, and are issued for a period of up to 10 years. Appropriations from the General Fund have been used to fund the issuance of the water use permits and related costs at approximately \$292,600 for SFY 2009.

During the last legislative session, the legislature authorized the department to collect up to an additional \$500,000 in fees. The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960's, nor do they cover the funding for the additional requirements placed on the department for this program during the ensuing years, which include the priority water allocation implementation during droughts, implementation of water conservation practices, and well interference compensation resolution. Many permit decisions must be made with inadequate available hydrogeological data. Well-interference cases often require that the department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation cases. Historically, there has been insufficient funding to meet these needs.

The annual fee for water use permits and aquifer storage and recovery permits will be based on the number of active permits and amount of water allocated, with a minimum fee of \$100 per permit. Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year. A more detailed explanation of the current and future program efforts can be obtained from the department's website at <http://www.iowadnr.com/water/quantity.html>.

The department plans to hold one public hearing to obtain public comment.

Charles C. Corell  
Chief, Water Quality Bureau  
Environmental Services Division  
February 25, 2009

**ENVIRONMENTAL PROTECTION COMMISSION [567]**  
**Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.260 through 455B.274, the Environmental Protection Commission gives notice that on February 17, 2009, the Commission requested the department reconsider the fee schedule in the amendment of Iowa Administrative Code 567-Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice" and Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water." The Notice of Intended Action was published on November 5, 2008, as ARC 7307B.

The purpose of this rulemaking is to include the fee schedule for the water use permit program into the Iowa Administrative Code. The previous water use permit fee schedule was rescinded in August 2008. Iowa Code 455B.105(11) allows the Environmental Protection Commission to adopt by rule a schedule of fees for permit applications as well as a schedule of fees which will be assessed for the management of Iowa's water use permitting program. In determining the fee schedules, the commission shall consider the cost of administration of permits, review of applications and compliance with the terms of the permits, and the relative benefits to the applicant and to the public of permit review, issuance, and monitoring compliance. The commission requested an alternate fee schedule for the annual permit fee at their February 17, 2009, meeting, which would include water allocated to water withdrawal permits in the fee schedule. This Notice includes that amended fee schedule in 567-50.4(2) "b".

By statute, water use permits are issued for up to 10 years. Appropriations from the General Fund have been used to fund issuance of the water use permits and related costs at approximately \$292,600 for SFY 2009.

The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960's, nor do they cover the funding for the additional requirements placed on the department for this program during the ensuing years such as: priority water allocation implementation during droughts, implementation of water conservation practices, and well interference compensation resolution. Many permit decisions must be made with inadequate available hydrogeological data. Well-interference cases often require that the department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation cases. Historically, there has been insufficient funding to meet these needs.

During the last legislative session, the legislature established a dedicated fund and authorized the department to collect up to \$500,000 in permit fees to implement this program. Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year minus the amount of any unused funds from the previous year and general fund appropriations that are assumed to remain at approximately \$292,600. The permit fee rule for the aquifer storage and recovery well permitting program will be revised and moved to Chapter 50 from Chapter 55.

Any interested person may file written comments on the proposed amendments on or before Thursday, April 30, 2009. Written comments or questions regarding the proposed action should be directed to Diane Moles, Water Supply Engineering Section, Iowa Department of Natural Resources, 401 SW 7<sup>th</sup> Street, Suite M, Des Moines, IA 50309-4611; via fax at 515/725-0348; or via e-mail at [diane.moles@dnr.iowa.gov](mailto:diane.moles@dnr.iowa.gov).

Oral or written comments will also be accepted at the public hearing that will be held in Des Moines. At each hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule. The hearing is scheduled for Tuesday, April 28, 2009, 11:00 a.m., at the DNR's Water Supply/FO5 Offices, 401 SW 7<sup>th</sup> Street, Suite I, Des Moines. Parking is available in the lots surrounding the building.

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

This amendment is intended to implement Iowa Code section 455B.105 and 455B.260 through 455B.274.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code §17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rulemaking.

The following amendments are proposed.

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**Item 1.** Adopt the following new subrule 50.4(2):

50.4(2) *Fees.*

*a. Application Fee.* An application to the department for a new permit, modification of an existing permit, or registration of a minor non-recurring use of water must be accompanied with the fee listed in the table below. These fees are nonrefundable and are not transferable. For any single application, if more than one fee in the table below applies, only the higher fee is required. The fees become effective on July 1, 2009.

<b>Application Description</b>	<b>Form</b>	<b>Fees, in dollars</b>
(1) To apply for a new permit to withdraw or divert water	16 (542-3106)	\$350
(2) To renew an existing permit	542-1470	\$0
(3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources	16 (542-3106)	\$350
(4) To modify the conditions of an existing permit which are not described in Item 3 of this table (see above)	16 (542-3106)	\$0
(5) To apply for an aquifer storage and recovery permit or a protected source designation	N/A	\$700
(6) To apply for a permit to store water	18 (542-3109)	\$75
(7) To register a minor nonrecurring use of water	20 (542-3112)	\$75

*b. Annual permit fee.* In addition to the application fee, there is an annual permit fee for a water use permit or an aquifer storage and recovery permit. The annual permit fees shall be based on the number of active permits and amount of water allocated. The fees will not be prorated and are nonrefundable. The annual permit fees are due December 1 of each year, beginning with December 1, 2009. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of \$100 will be imposed if the fee is not received by December 1. Failure to remit the fee by January 1 may result in the cancellation of the permit.

(1) The amount of budgeted expenses that are based on fees shall not exceed \$500,000 each year.

(2) The annual permit fees shall be based on the costs for administering the water use permitting program for the most recent year and on the budget for the next fiscal year. The department will review the annual permit fees each year and adjust the fees as necessary to cover all reasonable costs required to develop and administer the water use permitting program. The department shall request commission approval of the amount of the annual fee no later than September of each year.

1. The annual permit fee shall be based on the amount of water allocated, but shall not be less than \$100.

2. The portion of the annual permit fee that is based on the amount of water allocated is variable and is determined by the amount of funding needed, the number of valid individual water use permits assessed the annual fee, and the total water allocated on a statewide basis to all permits that will be assessed the annual fee.

(3) Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees.

(3) There is no annual fee for a water storage permit (see (6) of table at paragraph 50.4(2)“a”) or for a minor nonrecurring water use registration (see (7) of table at paragraph 50.4(2)“a”).

**Item 2.** Rescind and reserve subrule 55.5(2).